

Office of the Secretary, HUD

§ 81.73

AHAR information from the GSEs, the Secretary shall, as expeditiously as possible, examine the submissions for mortgage data and AHAR information that:

(1) Has been deemed to be proprietary information under this part by a temporary order, final order, or regulation in effect at the time of submission;

(2) Has been designated as proprietary information by the GSE in accordance with § 81.73;

(3) Would constitute a clearly unwarranted invasion of personal privacy if such data or information were released to the public; or

(4) Is required to be withheld or, in the determination of the Secretary, is not appropriate for public disclosure under other applicable laws and regulations, including the Trade Secrets Act (18 U.S.C. 1905) and Executive Order 12600.

(c) *Public data and proprietary data.* The Secretary shall place public data in the public-use database. The Secretary shall exclude from the public-use database and from public disclosure:

(1) All mortgage data and AHAR information within the scope of paragraphs (b)(1), (b)(3), and (b)(4) of this section;

(2) Any other mortgage data and AHAR information under (b)(2) when determined by the Secretary under § 81.74 to be proprietary information; and

(3) Mortgage data that is not year-end data.

(d) *Access.* The Secretary shall provide such means as the Secretary determines are reasonable for the public to gain access to the public-use database. To obtain access to the public-use database, the public should contact the Director, Office of Government-Sponsored Enterprises, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410, telephone (202) 708-2224 (this is not a toll-free number).

(e) *Fees.* The Secretary may charge reasonable fees to cover the cost of providing access to the public-use database. These fees will include the costs of system access, computer use, copying fees, and other costs.

§ 81.73 GSE request for proprietary treatment.

(a) *General.* A GSE may request proprietary treatment of any mortgage data or AHAR information that the GSE submits to the Secretary. Such a request does not affect the GSE's responsibility to provide data or information required by the Secretary. Where the Secretary grants a request for proprietary treatment, HUD will not include the data or information in the public-use database or publicly disclose the data or information, except as otherwise provided in accordance with this subpart.

(b) *Request for proprietary treatment of mortgage data and AHAR information.* Except as provided in paragraph (c) of this section, a GSE requesting proprietary treatment of mortgage data or AHAR information shall:

(1) Clearly designate those portions of the mortgage data or AHAR information to be treated as proprietary, with a prominent stamp, typed legend, or other suitable form of notice, stating "Proprietary Information—Confidential Treatment Requested by [name of GSE]" on each page or portion of page to which the request applies. If such marking is impractical, the GSE shall attach to the mortgage data or information for which confidential treatment is requested a cover sheet prominently marked "Proprietary Information—Confidential Treatment Requested by [name of GSE];"

(2) Accompany its request with a certification by an officer or authorized representative of the GSE that the mortgage data or information is proprietary; and

(3) Submit any additional statements in support of proprietary designation that the GSE chooses to provide.

(c) *Alternative procedure available for mortgage data or AHAR information subject to a temporary order, final order, or regulation in effect.* When the request for proprietary treatment pertains to mortgage data or AHAR information that has been deemed proprietary by the Secretary under a temporary order, final order, or regulation in effect, the GSE may reference such temporary order, final order, or regulation in lieu of complying with paragraphs (b)(2) and (3) of this section.

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(d) *Nondisclosure during pendency.* Except as may otherwise be required by law, during the time any Request for Proprietary Treatment under § 81.73 is pending determination by the Secretary, the data or information submitted by the GSE that is the subject of the request shall not be disclosed to, or be subject to examination by, the public or any person or representative of any person or agency outside of HUD.

§ 81.74 Secretarial determination on GSE request.

(a) *General.* The Secretary shall review all Requests for Proprietary Treatment from the GSEs, along with any other information that the Secretary may elicit from other sources regarding the Request.

(b) *Factors for proprietary treatment.* Except as provided in paragraph (c) of this section, in making the determination of whether to accord proprietary treatment to mortgage data or AHAR information, the Secretary's considerations shall include, but are not limited to:

(1) The type of data or information involved and the nature of the adverse consequences to the GSE, financial or otherwise, that would result from disclosure, including any adverse effect on the GSE's competitive position;

(2) The existence and applicability of any prior determinations by HUD, any other Federal agency, or a court, concerning similar data or information;

(3) The measures taken by the GSE to protect the confidentiality of the mortgage data or AHAR information in question, and similar data or information, before and after its submission to the Secretary;

(4) The extent to which the mortgage data or AHAR information is publicly available including whether the data or information is available from other entities, from local government offices or records, including deeds, recorded mortgages, and similar documents, or from publicly available data bases;

(5) The difficulty that a competitor, including a seller/servicer, would face in obtaining or compiling the mortgage data or AHAR information; and

(6) Such additional facts and legal and other authorities as the Secretary

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may consider appropriate, including the extent to which particular mortgage data or AHAR information, when considered together with other information, could reveal proprietary information.

(c) *Alternative criterion for mortgage data or AHAR information subject to a temporary order, final order, or regulation in effect.* Where the request for proprietary treatment pertains to mortgage data or AHAR information that has been deemed proprietary by the Secretary under a temporary order, final order, or regulation in effect, the Secretary shall grant the request with respect to any mortgage data or AHAR information which comes within the order or regulation.

(d) *Determination of proprietary treatment.* The Secretary shall determine, as expeditiously as possible, whether mortgage data or AHAR information designated as proprietary by a GSE is proprietary information, or whether it is not proprietary and subject to inclusion in the public-use database and public release notwithstanding the GSE's request.

(e) *Action when according proprietary treatment to mortgage data and AHAR information.* (1) When the Secretary determines that mortgage data or AHAR information designated as proprietary by a GSE is proprietary, and the mortgage data or AHAR information is not subject to a temporary order, a final order, or a regulation in effect providing that the mortgage data or AHAR information is not subject to public disclosure, the Secretary shall notify the GSE that the request has been granted. In such cases, the Secretary shall issue either a temporary order, a final order, or a regulation providing that the mortgage data or information is not subject to public disclosure. Such a temporary order, final order, or regulation shall:

(i) Document the reasons for the determination; and

(ii) Be provided to the GSE, made available to members of the public, and published in the FEDERAL REGISTER, except that any portions of such order or regulation that would reveal the